

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2630

IN THE MATTER OF:

Served November 16, 1984

Application of WHITE FLINT MALL)
METRO SHUTTLE EXPRESS, INC., for a)
Certificate to Conduct Special)
Operations)

Case No. AP-84-39

By motion filed October 18, 1984, White Flint Mall Metro Shuttle Express, Inc., ("White Flint Shuttle" or "applicant") seeks to waive public hearing on its application for authority to transport passengers, in special operations, between White Flint Metrorail Station, Rockville Pike at Marinelli Road, North Bethesda, Md., on the one hand, and, on the other, White Flint Mall Shopping Center, 11301 Rockville Pike, North Bethesda, Md., and requests a certificate of public convenience and necessity based on its pleadings and the affidavit of Mark D. Lerner, applicant's vice-president. The public hearing scheduled for October 25, 1984, 1/ has been cancelled pending our ruling on this motion. 2/

A review of the record in this case indicates that applicant duly notified the public of its pending application by publishing a notice in the prescribed form in The Washington Times on October 1, 1984. During the period established for the filing thereof, neither formal protests nor requests to be heard regarding White Flint Shuttle's application were filed. In consideration of the absence of protests as well as the limited scope of the service proposed by applicant, we shall make a determination based on the extant record. We turn now to a review of the evidence in order to establish whether applicant has made a prima facie case, thereby justifying a grant of the authority sought.

The affidavit of Mark D. Lerner sets forth the showing which applicant would have made had a public hearing been held. Mr. Lerner attests that the Washington Metropolitan Area Transit Authority ("Metro") has announced that it will begin service to the White Flint Metrorail Station ("the Station") in December 1984. White Flint Mall ("the Mall"), a major regional shopping center, is located

1/ See Order No. 2612, served September 26, 1984 and incorporated herein by reference.

2/ See Order No. 2620, served October 19, 1984.

approximately one-half mile south of the Station. Because the route between the Station and the Mall is heavily traveled, Mr. Lerner states that, were they required to walk, prospective shoppers would not only suffer inconvenience but also would be placed in serious danger as a result of vehicular traffic.

Mr. Lerner avers that the Mall's tenants have requested that the service applied for in these proceedings be instituted on the grounds that it will be necessary for shoppers utilizing Metrorail. He notes also that the proposed service will be likely to increase Metrorail ridership and will reduce vehicular traffic in the area.

According to Mr. Lerner, applicant is fit, willing and able to perform the proposed service and will abide by pertinent regulatory requirements of the Commission. White Flint Shuttle intends to operate its scheduled shuttle service using a single 15-passenger van acquired pursuant to a lease which, applicant promises, will be satisfactory to WMATC. With the exception of periods during which Metro is not operating trains to the Station, applicant's service will be provided beginning at 9:30 a.m. and ending at 9:25 p.m., seven days a week, with departures from each of its termini at thirty-minute intervals. A net operating loss of \$29,000 is projected for the first twelve months of operations. Applicant's total expenses for that period are projected to be \$63,000 which amount will be guaranteed by an irrevocable letter of credit to be posted by the owners of White Flint Mall upon applicant's WMATC certification. In addition, revenues of \$34,000 are projected from the proposed one-way fare of \$.25.

The criteria for determining whether a certificate of public convenience and necessity should issue are set forth in Section 4(b) of Title II, Article XII of the Compact. Specifically, applicant has the burden of proving (1) its fitness relative to operations, financial condition and compliance and (2) that the proposed transportation is or will be required by the public convenience and necessity. We find that applicant has fully met this burden.

Applicant has no history of illegal operations. Its vice-president attests that applicant will abide by the Commission's regulatory requirements, and, given the fact of White Flint Shuttle's application, there is no reason to think otherwise. Based on this evidence, we find applicant fit as to compliance.

Additionally, we find applicant to be financially and operationally fit. Applicant proposes limited service which will require a single vehicle. Mr. Lerner's affidavit indicates that the vehicle will be leased in a manner which will meet with the Commission's approval. With regard to applicant's financial condition we note that White Flint Shuttle is newly incorporated and has no balance sheet or operating statement. However, the record indicates that White Flint Shuttle's expenses, as projected, will be guaranteed

by the owners of the Mall. Of course, at the end of the first 12-month period, we anticipate that a new letter of credit or similar document will issue. We would not expect projections of expenses or their guarantees to exceed 12 months at a time. However, because it is the financial backing of the White Flint Mall Promotional Fund which gives applicant the capability to conduct the proposed service, lack of evidence of financial and operational soundness beyond the first 12 months of operations will sustain our interest in applicant's continuing fitness.

Finally, we find that the evidence indicates that the public convenience and necessity require the proposed transportation. The owners and occupants of the Mall are familiar with the current volume and modes of traffic to their premises and have reason to be aware of those factors which will facilitate use of Metro to access their location. Their firm commitment to subsidize transportation between the Mall and the Station indicates their belief that such service will enhance access to the Mall.

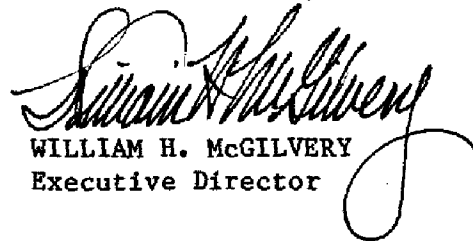
THEREFORE, IT IS ORDERED:

1. That White Flint Mall Metro Shuttle Express, Inc., is hereby granted a certificate of public convenience and necessity to transport passengers, in special operations, between White Flint Metrorail Station, Rockville Pike at Marinelli Road, North Bethesda, Md., on the one hand, and, on the other, White Flint Mall Shopping Center, 11301 Rockville Pike, North Bethesda, Md.

2. That White Flint Mall Metro Shuttle Express, Inc., is hereby directed to file the following: (1) two copies of its WMATC Tariff No. 1, (2) four copies of its vehicle lease in the form prescribed by the Commission, (3) an executed original of the White Flint Mall Promotional Fund's letter of credit, (4) a current certificate of insurance, and (5) an affidavit certifying identification of its vehicles in compliance with Commission Regulation No. 68 for which purpose WMATC Certificate No. 117 is assigned.

3. That unless White Flint Mall Metro Shuttle Express, Inc., complies with the requirements of ordering paragraph No. 2 within 30 days or such additional time as the Commission may direct, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety, effective upon the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director

